IN THE

SUPREME COURT OF THE UNITED STATES

MRS. ROBERT LEE TURMAN and CULLEN B. GOSNELL

Appellants

VS.

J. LON DUCKWORTH, as Chairman Georgia State Democratic Executive Committee;

MISS GRACE CANNINGTON, as Secretary Georgia State Democratic Executive Committee;

THE STATE DEMOCRATIC EXECUTIVE COMMITTEE OF THE STATE OF GEORGIA, an unincorporated association; and

BEN W. FORTSON, JR., as Secretary of State of Georgia.

Appellees

Number 532

October Term 1946

MOTION TO ADVANCE

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Appellants in the above stated case respectfully make this motion to advance hearing and argument of this appeal which is now pending to the end that it be assigned on the calendar of the Court for the earliest possible date in the October, 1946 term. In support of the motion the movants show:

I.

This case is on direct appeal to this Court from an order of a three judge Court convened by a District Judge under the provisions of Judicial Code, Section 266, amended, U.S.C.A. Title 28, Section 380, denying an interlocutory injunction.

2.

The complainants, citizens and qualified voters in a class action in equity brought their complaint in the District Court for the Northern District of Georgia against the State Democratic Executive Committee, its Chairman, its Secretary and the Secretary of State for Georgia. The relief prayed for was that a statute of the State of Georgia providing for primary elections and setting up a "county unit" system of counting or evaluating votes should be declared invalid and unconstitutional as violative of the equal protection clause of the 14th Amendment to the Constitution of the United States and that State and party officials named as defendants be restrained and enjoined from taking certain steps to give effect to the alleged results of a State wide primary for the nomination of candidates for Governor and other State officers held under the provisions of this Statute in Georgia on July 17, 1946.

3.

Under the provisions of the Constitution of the State of Georgia "electors" who shall be entitled to vote for members of the General Assembly and State officers in General Election are defined and plaintiffs are among that class of electors. The State Constitution also provides that the Governor shall be elected in a General Election by a majority of the votes of all electors of the State voting in a State wide general election. There is no other classifica-

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tion of voters or electors provided in the Constitution.

4.

The attack on the statute was that by it the General Assembly had set up a scheme under which a candidate in any primary election securing a plurality of votes in any county should be deemed to have carried that county, and that the "unit" vote of each of eight counties of the state should be counted as six and in each of thirty counties shoulr be counted as four and each of the remaining one hundred twenty-one counties should be counted as two, this representing two unit votes for each representative a county had in the General Assembly. The complainants alleged that they and others similarly situated living in the more populous counties having six unit votes were grossly discriminated against in their enjoyment of the right of franchise provided by and derived from their State Constitution and were thus deprived of equal protection of the laws since under the statute their votes were counted or valued on a basis grossly disproportionate to that of votes in other counties, particularly those in the smaller counties having two unit votes, where in the instance of one county a vote of one elector would count 106 times that of a single vote of the class of one of the plaintiffs in a six unit county, and so on over the whole state in varying degrees of discrimination, resulting in virtually depriving plaintiffs of their entire right of franchise.

5.

It was further alleged that in the primary held on July 17, 1946 the candidate who received a majority of the county unit vote did not receive a majority or plurality of the popular vote as did another candidate, but nevertheless under the terms of the statute alleged to be violative of the Constitution of the United States would be certified to the Secretary of

State as the nominee of the Democratic Party and unless the Secretary of State was restrained, as prayed, the name of such candidate would be placed on State ballots for General Election to be hold on November 5, 1946 as the duly nominted candidate for Governor.

6.

The District Judge to whom the complaint was presented had denied temporary restraining order and by the time the three-Judge Court had been convened to hear the cause on August 16, 1946 the Secretary of State had already placed on the ballots to be used in the General Election the name of this candidate alleged to have been so illegally nominated. It then also appeared that under other valid provisions of law the time for qualifying and filing as candidate for Governor in the General Election had expired and no other name had been or could be entered on ballots for the coming General Election. Prior to the hearing before the three-Judge Court plaintiffs amended their complaint showing the above stated facts and prayed that in addition to other relief the Secretary of State be enjoined from transmitting the name of the candidate so selected to the General Assembly, which will be done under the provisions of the State Constitution when the General Assembly convenes on January 13, 1947, unless injunction is granted.

7.

Upon hearing before the three-Judge Court on August 16, 1946, interlocutory injunction was denied by order, judgment and opinion entered on August 24, 1946, from which appeal was promptly taken by plaintiffs-appellants, said appeal being filed in this Court on September 23, 1946.

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8.

Unless argument and decision of this Court can be had, and an interlocutory injunction, as prayed, granted on or before January 13, 1947, the Secretary of State of the State of Georgia will transmit to the General Assembly the name of the candidate receiving the majority vote in the general election (who of necessity will be the candidate nominated under the county unit rule in the primary election held July 17, 1946), and such candidate will be, by the General Assembly, inducted into office January 14, 1947, rendering moot the questions as to injunctive relief prayed for by appellants. It is therefore submitted that the case here pending should be advanced for argument ahead of what might be its normal assignment by reason of the date of its filing.

9.

This motion is made in accordance with Rule 20, Paragraph 3 of the Rules of this Court.

WHEREFORE movants pray that appropriate action be taken which will permit the earliest possible presentation of argument to this Court.

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ATTORNEYS FOR THE TWO
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Service of the foregoing MOTION TO ADVANCE is hereby acknowledged. Copies received.

This 1st day of October, 1946.

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